BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

DARREN E. STEVENS	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,030,581
WALGREEN'S CONSTRUCTION	)	
Respondent	)	
AND	)	
	)	
ZURICH AMERICAN INSURANCE COMPANY	)	
Insurance Carrier	)	

ORDER

Respondent appeals the October 11, 2006 preliminary hearing Order of Administrative Law Judge Kenneth J. Hursh.

ISSUES

1. Does the Kansas Workers Compensation Division have jurisdiction over this matter?

2. What is the appropriate date of accident in this matter?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the undersigned Board Member concludes the preliminary hearing Order should be affirmed.

Claimant has worked for respondent for several years and regularly travels to Missouri, Arkansas, Oklahoma, Nebraska and Kansas, performing construction tasks for respondent. Claimant's duties require that he use hand tools, including drills, saws, hammers and electric power tools.

In April 2006, while working for respondent in Missouri, claimant began noticing problems with his hands and arms. Claimant continued to work for respondent, and in May 2006, was transferred to respondent's store in Ottawa, Kansas. While working in Kansas, claimant's condition worsened to where claimant would awake with bilateral arm

numbness. Claimant reported the condition to his supervisor and was referred for medical treatment. Claimant underwent several diagnostic tests and was diagnosed with bilateral carpal tunnel syndrome.

The dispute in this matter deals with the appropriate date of accident and whether claimant's accident arose out of and in the course of his employment in Kansas.

K.S.A. 2005 Supp. 44-508(d) specifies how a date of accident is to be determined in Kansas. In particular, it states:

> In cases where the accident occurs as a result of a series of events, repetitive use, cumulative traumas or microtraumas, the date of accident shall be the date the authorized physician takes the employee off work due to the condition or restricts the employee from performing the work which is the cause of the condition. . . .

In this matter, claimant was restricted from performing his duties with respondent by the authorized treating physician shortly after transferring to the Ottawa, Kansas job. Claimant's last day with respondent occurred while claimant worked in Kansas. Thus, the accident occurred while claimant worked in Kansas and the Kansas Workers Compensation Division has jurisdiction over this matter.

Respondent argues that claimant spent 6 of his last 8 weeks with respondent working in Missouri. The Kansas Workers Compensation Act does not limit benefits to only those who have suffered a majority of their injuries in Kansas. In fact, it is not even necessary for a claimant to have physical contact with Kansas turf. Contact with Kansas airspace is sufficient to allow benefits to be ordered.[1]

Here, claimant had contact with Kansas turf on multiple occasions and was working in Kansas when restricted by the authorized treating physician.

In workers compensation litigation, it is the claimant's burden to prove his/her entitlement to benefits by a preponderance of the credible evidence.[2]

The burden of proof means the burden of a party to persuade the trier of fact by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record.[3]

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[1] *Graff v. Trans World Airlines*, 267 Kan. 854, 983 P.2d 258 (1999).

[2] K.S.A. 2005 Supp. 44-501 and K.S.A. 2005 Supp. 44-508(g).

[3] *In re Estate of Robinson*, 236 Kan. 431, 690 P.2d 1383 (1984).

It is well established under the Workers Compensation Act in Kansas that when a worker's job duties aggravate or accelerate an existing condition or disease, or intensify a preexisting condition, the aggravation becomes compensable as a work-related accident.[4]

In workers compensation litigation, it is not necessary that work activities cause an injury. It is sufficient that the work activities merely aggravate a preexisting condition. This can also be compensable.[5]

This Board Member finds that claimant's date of accident under K.S.A. 2005 Supp. 44-508(g) was the last day he worked before being given restrictions from the authorized physician, which restricted him from continuing his work for respondent in Kansas. Thus, the Kansas Workers Division has jurisdiction over this matter, and the Order of the Administrative Law Judge should be affirmed.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.[6] Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2005 Supp. 44-551(b)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

WHEREFORE, it is the finding, decision, and order of this Appeals Board Member that the Order of Administrative Law Judge Kenneth J. Hursh dated October 11, 2006, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December, 2006.

BOARD MEMBER

c: Derek R. Chappell, Attorney for Claimant
Michelle Daum Haskins, Attorney for Respondent and its Insurance Carrier
Kenneth J. Hursh, Administrative Law Judge

[4] *Demars v. Rickel Manufacturing Corporation*, 223 Kan. 374, 573 P.2d 1036 (1978).

[5] *Harris v. Cessna Aircraft Co.*, 9 Kan. App. 2d 334, 678 P.2d 178 (1984).

[6] K.S.A. 44-534a.